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OFFICE OF PETITIONS

In re Application of
HASHIMOTO, Noriaki
Application No. 09/690,818
Filed: October 18, 2000
Attorney Docket No. **2910-101**

DECISION ON PETITION
UNDER 37 CFR 1.137(b)
AND 37 CFR 1.181

This is a decision on the petition under 37 CFR 1.137(b), filed August 20, 2007, to revive the above-identified application and the petition filed, August 22, 2007, which is being treated as a petition to withdraw the holding of abandonment under the provisions of 37 CFR 1.181.

The petition under 37 CFR 1.181 is **DISMISSED**.

The petition under 37 CFR 1.137(b) is **GRANTED**.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of August 22, 2006. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(II)(A)(2). Accordingly, the date of abandonment of this application is November 23, 2006.

On August 22, 2006, a final Office Action was mailed that set forth a shortened statutory period for reply of three (3) months from the mailing date thereof. The final Office Action also informed applicant that:

"- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication", and

"- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133)."

On this basis, the three month shortened statutory expired at midnight on Wednesday, November 22, 2006 and six months from the mailing of the final Office Action expired at midnight on Thursday, February 22, 2007. In order to avoid abandonment of the application, a reply must have been received on or before (1) the three month deadline of November 22, 2006 or (2) the expiration of any extended deadline date up to and including the six month deadline date of February 22, 2007.

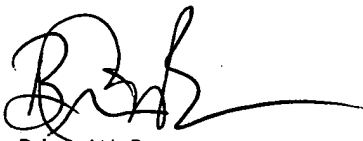
Petitioner states that in this case, a Notice of Appeal was filed on February 23, 2007. The file record shows that a three (3) month extension of time and fee were submitted with the Notice of Appeal on February 23, 2007. As set forth above, the six month deadline date for timely filing any response to the August 22, 2006 final office action expired on February 22, 2007 (no extensions were available beyond six months). Since the Notice of Appeal was filed after the February 22, 2007 six month deadline date, the application was properly held abandoned and the Petition to withdraw the holding of abandonment must be dismissed.

The petition to revive was not accompanied by an appropriate statement of express abandonment in favor of the filing of a continuing application. In order to facilitate action, the petition to revive should include reference to the filing of a continuing application and a letter of express abandonment, conditional upon the granting of the petition and of a filing date to the continuing application. Nevertheless, in view of the statement that the reply is the filing of a continuing application, the statement will be construed as a request to expressly abandon this application in favor of the continuing application. If this was not the intent of applicant, the Office should be promptly notified.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a continuing application under 37 CFR 1.53(b); (2) the petition fee of \$750; and (3) an adequate statement of unintentional delay.

This application is being revived solely for purposes of continuity. As continuity has been established by this decision, the application is again abandoned in favor of continuing application 11/841,403 filed August 20, 2007.

Telephone inquiries concerning this decision should be directed to Monica A. Graves at (571) 272-7253.

A handwritten signature in black ink, appearing to read 'Brian W. Brown', with a long horizontal flourish extending to the right.

Brian W. Brown
Petitions Examiner
Office of Petitions